

REMARKS/ARGUMENTS

Claims 6, 8-17, 21-34 and new claims 35-36 are pending in the application, with claim 21 being withdrawn pursuant to a restriction requirement, and claims 1-5 and 18-20 previously having been cancelled.

Applicant is pleased that the section 112 rejections have been overcome by the amendments previously submitted.

Three rejections remain in the case, namely two rejections each based on a combination of references, and one rejection based on a single reference.

Applicant addresses the rejection of claim 31 first, which is based on the single reference of Aurio (since that reference also is used in the rejection of the other claims).

Claim 31 stands rejected under 35 U.S.C. 102(e) as being anticipated by Aurio (US 2006/0099324). This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Applicant submits that claim 31 should be patentable over the cited art. The Examiner cites Aurio for a disclosure of its Example 1, appearing in par [0098]. Applicant's claimed composition recites a ratio of konjac glucomannan to animal based protein concentrate from about 10:1 to 5:1. The rejection is based on Aurio disclosing this ratio. Applicant has reviewed the cited to Example provided in Aurio and submits that Applicant's claimed ratio is not disclosed therein. The konjac content in the cited Example is disclosed to be 1% (of the total weight of the composition). Applicant recites animal based protein

concentrate. That is supported in the Applicant's specification and includes protein from egg, pork, etc. (See the specification at p. 6, lines 12 to 19.) The animal based protein content of konjac to protein, in Example 1 of Aurio, would appear to be 1:28 to 1:13, based on the listing of egg and collagen. The Examples of Aurio, including Example 1, provide for 1% konjac. Applicant's invention, as recited in claim 31, recites konjac as the major amount compared to the animal based protein concentrate, whereas, in cited Aurio Example relied on in the Office Action, the konjac is disclosed to be the minor amount relative to the animal based protein. Even considering the additional Examples of Aurio which appear to recite konjac (e.g., Examples 2 and 3), the konjac still would be present in a minor amount relative to the protein (e.g., collagen) when the protein is present, and not the ratios claimed by Applicant.

Accordingly, Applicant's claimed composition, as recited in claim 31, is distinguishable over Aurio, and is not taught, suggested or disclosed. For these reasons, reconsideration and a withdrawal of the rejection are respectfully requested with respect to claim 31.

NEW CLAIM 35:

New claim 35, which depends from claim 31, has been added to round out coverage of the invention. Claim 35 articulates that the protein is supplied in the form of a flour. For the above reasons, and for these additional reasons, reconsideration and allowance of claim 35 is respectfully requested.

Claims 6, 8-17 and 22-25 and 32-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Aurio (US 2006/0099324) in view of Tye (5,308,636). This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The rejection in the Office Action is based on the references previously cited by the Examiner (in the prior Office Action) and addressed by Applicant (in the prior Amendment/Response). The Examiner acknowledges Applicant's position distinguishing the present invention, but considers the admixture boiling to be a process not clearly distinct from the claimed product. This rejection is respectfully but strenuously traversed in view of the above amendments and the remarks presented herein.

Applicant has amended claim 22 to more clearly and particularly distinguish the present invention. Applicant claims a food product which includes at least one component which the cited references alone or taken together fail to suggest or disclose. The Applicant provides an enhanced food product component which is a treated mixture of konjac glucomannan and animal based protein. The additive or treated mixture is described and claimed as a component of the enhanced composition. Claim 22 recites:

a) a food comprising a texturized additive, said texturized additive comprising an admixture of konjac glucomannan and animal based protein concentrate;

and further provides that:

wherein said admixture comprises konjac glucomannan and animal based protein concentrate in a ratio by volume which provides said additive with a predetermined texture, which admixture has been

heated to above 100 degrees Celsius, wherein said predetermined additive texture consists of an improved texture for facilitating use of said additive ~~admixture~~ as a component of said food product.

The enhanced food product additive component is treated and provided to have desirable texture properties. For these additional reasons, claim 22 should be patentable over the cited references.

Though the Examiner had considered the feature to relate to a process, Applicant believes that the claims, as now presented, even are supported by legal authority. For example, in In re Herrick, 55 CCPA 1238, 397F.2d 332, 158 USPQ 90 (CCPA 1968), the CCPA considered a claim reciting an admixture to be patentable:

4. The resin-forming composition comprising a polymethylol phenol in the form of a heavy syrup having a mole ratio of combined formaldehyde-to-phenol of from 2.3 to 2.52 which is water insoluble containing no free formaldehyde and being free of inorganic material, and an alkali lignin which is free of inorganic material in **admixture** with the polymethylol phenol, said mixture being soluble in organic solvents including methanol and being condensable by heating to an insoluble, infusible resin which has low water absorption and high dielectric properties.

For the above reasons, Applicant submits that the invention, as recited in claim 22, and claims dependent therefrom, should be patentable. Reconsideration and a withdrawal of the rejection is respectfully requested.

NEW CLAIM 36:

Applicant has added new claim 36 which recites a food product that includes at least one food-forming first component comprising the texturized

additive, the additive being a texturized product formed from a mixture of konjac glucomannan and animal based protein concentrate which are combined in desirable amounts and have been heated together (to over 100° C) to form the texturized additive. The claimed food product of new claim 36 is recited to contain:

at least one food-forming first component comprising a texturized additive of a mixture of konjac glucomannan and animal based protein concentrate, said texture of said texturized additive having properties corresponding with heat treating said konjac glucomannan and said animal based protein concentrate together to a temperature of over 100 degrees;

Applicant notes the Examiner's reliance on, and reference to, Aurio paragraph [0085] for a disclosure which the Examiner considers to be Aurio combining a viscous soluble fiber with a viscosity-lowering protein in water, further asserting that the water may be a boiling medium. However, this does not disclose or suggest Applicant's claimed food product with the recited food-forming first component, in particular, as recited in new claim 36. Applicant's specification refers to the additive containing the konjac glucomannan and protein the interaction of which, when heated to temperatures of above 100 C leads to a material which has a suitable texture(e.g., less gummy) rendering it useful as a food-additive for various foods. (See Applicant's specification, p6, line 21 to p. 7, line 1.)

For the above reasons, and for these additional reasons, new claim 36 is distinguishable over the cited references, including Aurio, and is not taught,

suggested or disclosed thereby. Reconsideration and allowance of new claim 36 is respectfully requested.

Claim 13 is distinguishable over the cited references and the rejection of claim 13 should be withdrawn. The rejection of claim 13 in the Office Action is based on the konjac gum in Aurio acting as a binding agent. First, this basis for the rejection should not stand given a fair reading of what Aurio discloses. Applicant, as recited in claim 13, not only includes the component konjac glucomannan, but also recites another component, namely, a binding agent:

- konjac glucomannan;
- animal based protein concentrate;
- predetermined seafood flavoring; and,
- binding agents.

The Office Action also considers that konjac would be a "binding agent for water". However, again, Applicant's claim 13 specifies not only konjac glucomannan, but also, in combination therewith a binding agent. For these reasons, the present invention, as recited in claim 13, is not taught, suggested or disclosed by the cited references.

Second, the rejection in the Office Action also considers that Aurio, at paragraph [0033], is deemed to disclose proteins and that "any of the proteins of paragraph [0033] would be expected to act as a protein-based glue." However, Aurio discloses that the proteins referred to are "viscosity-lowering proteins". If, as the rejection considers, these proteins would be the "binding agents" as

disclosed and claimed by the Applicant's invention, e.g., in claim 13, this still would not be disclosed or suggested by Aurio. What Aurio's disclosure would disclose to one of ordinary skill in the art, in regard to binders, are not those "binding agents" recited in the Applicant's invention. Aurio, at par [0061] specifically refers to "binders, such as *starch, gelatin, tragacanth, methylcellulose and/or polyvinylpyrrolidone (PVP)*". In Aurio, these components, however, do not appear to be disclosed in conjunction with the konjac, as they are in the Applicant's invention recited in claim 13. Therefore, Aurio does not appear to disclose the Applicant's imitation seafood product of claim 13 where konjac glucomannan is recited to be present not as a binder, as the rejection considers this component to be (relying on the Aurio disclosure), but with another component, namely, "binding agents".

For the above reasons, Applicant's invention, as recited in claim 13, is not taught, suggested or disclosed by the cited references, and should be patentable.

In addition, claims 15, 33 and 34 further particularize binding agents, and for the same reasons, are not believed to be disclosed or suggested by Aurio, alone or when combined with Tye.

Claims 6, 8-15, 17, 22, 26 and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636). This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

First, Applicant, for the same reasons as those set forth above, presented in support of the combination of Aurio and Tye, submits that the rejection of the claims based on the Tye reference should be withdrawn. Second, Tye does not appear to recite the additive claimed by Applicant. In particular, the admixture is recited to be a component of the claimed food. Additionally, new claim 36 is believed to be distinguishable over Tye. As Applicant has set forth in the specification, the additive provides for a texture that is suitable texture (e.g., less gummy) rendering it useful as a food-additive for various foods. (See Applicant's specification, p6, line 21 to p. 7, line 1.) Tye fails to suggest or disclose Applicant's claimed invention. Again, a component of the product is the additive. For these reasons, the rejection of the claims based on Tye should be withdrawn.

Reconsideration of the rejections is respectfully solicited in view of the amendments and the remarks presented above.

CONCLUSION


Applicant submits that the present claims, as currently amended, recite non-obvious embodiments of the invention which are not taught, suggested or disclosed by the references cited and relied upon by the Examiner.

If matters relating to the claim language remain, the Examiner is invited to telephone the Applicant's undersigned representative to resolve them.

If necessary, an appropriate extension of time to respond is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
HARDING, EARLEY, FOLLMER & FRAILEY
John F.A. Earley III
Frank J. Bonini, Jr.
Charles L. Riddle

 1/16/08
Frank J. Bonini, Jr., Reg. No. 35,452
86 The Commons at Valley Forge East
1288 Valley Forge Road
P. O. Box 750
Valley Forge, PA 19482-0750
Telephone: 610-935-2300
Attorney for Applicant